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**applying for admission pro hac vice*

Attorneys for Plaintiff
HAINAN AIRLINES, CO. LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HAINAN AIRLINES, CO. LTD.,

Plaintiff,

v.

AVIATION PORT SERVICES, LLC,

Defendant.

Case No. 5:16-cv-05143

**COMPLAINT FOR BREACH OF
CONTRACT, WANTON AND
RECKLESS MISCONDUCT, AND
NEGLIGENCE**

DEMAND FOR JURY TRIAL

Plaintiff Hainan Airlines, Co. Ltd. (“HNA” or “Plaintiff”) seeks monetary damages from Defendant Aviation Port Services, LLC (hereinafter, “APS” or “Defendant”) for damages to Aircraft B2750, a Boeing 787 owned by HNA directly caused by the reckless acts and omissions of an APS employee at San Jose International Airport on September 21, 2015 (hereinafter the “Incident”).

As alleged more fully below, the Incident was caused by the reckless misconduct and

omissions of an APS employee during the course and scope of his employment with APS. Despite numerous good-faith attempts by HNA to obtain reimbursement for its reasonable damages directly caused by the Incident, APS has refused to so reimburse, in violation of the 2008 Standard Ground Handling Agreement between HNA and APS (“SGHA”). HNA seeks all damages that it directly and reasonably incurred as a result of the Incident in an amount not less than USD 465,526.60, and such additional relief that this Court deems appropriate, as follows:

Parties

1. Plaintiff HNA is a Chinese limited company organized under the laws of the Peoples Republic of China with its principal place of business in Haikou, Hainan, Peoples Republic of China. HNA is a privately owned airline that operates scheduled domestic and international service to more than 90 cities, including service to the San Jose International Airport.

2. Defendant APS is a limited liability company organized under the laws of the State of California, with its principal place of business defined in the SGHA as 5814 Graham Ave., Ste. 205, Sumner, WA 98390.

Jurisdiction and Venue

3. This Court has personal jurisdiction over APS because APS is a California limited liability company and conducts business in the State of California.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000, and there is complete diversity between the parties. Plaintiff HNA is a citizen of a foreign state, the Peoples Republic of China, and Defendant APS is a California limited liability company with, upon information and belief, all of its members being residents of various states of the United States of America.

5. This Court has jurisdiction over the subject matter of this action under Paragraph 9 of Annex B to the SGHA between the parties, which permits dispute resolution by way of litigation should “all reasonable efforts to resolve disputes amongst” the parties fail. HNA has repeatedly attempted in good faith, at several different times, to resolve this dispute with APS by

1 email, telephone, and by formal written letter and communications. All of these attempts have
2 failed. APS has refused, and refuses, to compensate HNA for the damages it has incurred.

3 6. Venue is proper in this District under 28 U.S.C. § 1391(b), as a substantial part of
4 the events or omissions giving rise to the claim occurred in this District.

5 **The Incident**

6 7. On September 21, 2015, B2750, a Boeing 787 owned by HNA, landed at San Jose
7 International Airport and taxied to Gate 18.

8 8. After arriving at the Gate, APS, pursuant to its duties under the SGHA, began to
9 service the aircraft.

10 9. As APS readied the aircraft for its next departure, an APS employee asked another
11 APS employee, Logan Gordon, to *carry* passengers' strollers down the ramp from the passenger
12 bridge to the cargo area of the aircraft.

13 10. Mr. Gordon decided not to follow the instructions he was given. Rather, Mr.
14 Gordon, acting in the scope of his employment with APS, recklessly chose to use the electric
15 bridge elevator to lower the strollers to the ground.

16 11. Mr. Gordon made this decision even though (1) his coworker had specifically told
17 him moments earlier to carry the strollers to the cargo area, and (2) APS's established practices
18 and policies *prohibit* the use of the bridge elevator when wide bodied aircraft such as a Boeing
19 787 are at the Gate, because the close proximity of the elevator to the aircraft creates a high risk
20 that the elevator will impact and cause damage to the aircraft.

21 12. Mr. Gordon was *trained* by APS not to use the bridge elevator when aircraft were
22 parked at a Gate, because the close proximity of the elevator to the aircraft creates a high risk that
23 the elevator will impact and cause damage to the aircraft.

24 13. The proximity of the bridge elevator to wide bodied aircraft such as HNA's B2750
25 is even more dangerously close at Gate 18 of San Jose International Airport than it is at other
26 gates. APS and Mr. Gordon were both aware of this fact before the Incident.

27 14. After the strollers were unloaded from the bridge elevator, Mr. Gordon pushed the
28 button to raise the elevator back to bridge level.

1 15. At no time did Mr. Gordon check to see if the gate to the bridge elevator was ajar
2 prior to raising the elevator. In fact, it was open.

3 16. Rather than watch and monitor the elevator as it rose, Mr. Gordon walked away to
4 complete other tasks. Mr. Gordon was distracted, too busy, or trying to multitask.

5 17. As the bridge elevator rose, the open gate to the elevator swung open. The left
6 engine cowling of B2750 was now in the direct path of open gate to the bridge elevator as it rose.

7 18. The open elevator gate struck and severely damaged the left engine cowling of
8 B2750 as pictured below:



25 19. Because Mr. Gordon walked away from the bridge elevator after activating it, and
26 did not watch the elevator as it rose, he did not see that the gate to the elevator had swung open.

27 20. Mr. Gordon also did not see that the open elevator gate would strike the engine
28 cowling of B2750. Another APS employee yelled to Mr. Gordon to tell him of the impact.

21. Had Mr. Gordon simply followed (1) the instructions of his co-worker, (2) APS's policies and procedures, or (3) his training, and carried the strollers to the cargo area of the aircraft, the damage to B2750 would not have occurred.

22. Further, had Mr. Gordon remained at the controls of the bridge elevator after activating them, he would have seen the gate swing open, and could have prevented the impact and resulting damage.

23. As a direct result of Mr. Gordon's recklessness, the engine cowling of B2750 sustained serious damage that required it to be removed for significant repairs, forcing HNA to rent a replacement cowling during the repair process.

24. If not repaired with reasonable expediency, the damage to the cowling could have increased. Further, the presence of a dent in the cowling left B2750 more vulnerable to foreign object damage during flight, creating a potential for damage to the aircraft's engine. Accordingly, HNA could fly the damaged aircraft for a time, but full replacement of the damaged areas was necessary before B2750's next scheduled maintenance. To not repair the cowling before the next scheduled maintenance threatened B2750's airworthiness and the safety of HNA's passengers and crew. It would also have violated HNA's operating requirements.

25. The engine cowling for a Boeing 787 aircraft is a gigantic, rare part. The Boeing 787 is a relatively new model aircraft, and repair off-wing was required. HNA contracted with Goodrich, the only manufacturer of the Boeing 787 engine cowling, to obtain a temporary replacement cowling in the closest location possible, Singapore. Goodrich also was contracted to repair the damage to the engine cowling of B2750 which was directly caused by the recklessness of APS employee Logan Gordon.

Damages

26. HNA sustained the following damages to B2750 which were directly caused by the reckless conduct of APS employee Logan Gordon:

	DESCRIPTION	COST (USD)
1	Non-Destructive Testing Inspection Fee	1500

2	Airport support working fee	442.72
3	Damaged Cowling Removal Fee	2635
4	Transport fee (to maintenance)	610.4
5	Maintenance fee	21256.56
6	Total cowling rental fee	436413.02
7	Cowling replacement fee	2058.5
8	Transport fee (to maintenance)	610.4
	TOTAL DAMAGES	465,526.60

The SGHA

27. The parties entered into the SGHA, a services contract entitled “IATA Standard Ground Handling Agreement 2008,” effective 15 June 2015.

28. The SGHA remains in effect, and APS still services HNA aircraft for compensation. HNA is APS's customer for ground handling services.

29. The SGHA contractually establishes APS as HNA’s ground services provider at San Jose International Airport.

30. The SGHA sets forth contractual obligations and requirements owed by APS to HNA, in addition to the common law duty of care owed to HNA by APS and its employees.

31. Article 5.1 of the SGHA, “Standard of Work” requires that APS “carry out all technical and flight operations services as well as other services also having a safety aspect, for example, load control, loading of aircraft, . . . in accordance with the [HNA’s] instructions. . . . In the case of absence of instructions by [HNA], [APS] shall follow its own standard practices and procedures”

32. HNA did not provide APS with instructions allowing use of the bridge elevator at San Jose International Airport. Accordingly, APS was obligated to follow its own standard practices and procedures.

1 Dated: September 7, 2016

JONES DAY

2 By: /s/ Brian G. Selden

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